No. 72-2062

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HONORABLE C. WILLIAM O'NEILL,
Chief Justice of the Supreme Court
of Ohio, et al.,
Petitioners,

vs.

HONORABLE FRANK J. BATTISTI, Chief Judge
of the United States District Court for
the Northern District of Ohio,
Respondent.
George S. Heitzler, Jr.,
Intervenor.

ORDER

Filed
Nov. 13, 1972
James A. Higgins, Clerk

Before: PHILLIPS, Chief Judge, MILLER and LIVELY, Circuit Judges.

Upon consideration, IT IS ORDERED that the motion of Intervenor, George S. Heitzler, Jr., to stay the execution and enforcement of the order of this Court of November 10, 1972, granting a writ of mandamus, be and hereby is denied.

Entered by order of the Court.
JAMES A. HIGGINS, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DANIEL T. TAYLOR, III, et al.,
Plaintiffs

v.

KENTUCKY STATE BAR ASSOCIATION,
et al., *Defendants*

Civil Action No. 6171

MEMORANDUM AND ORDER

Pursuant to the mandate of the Sixth Circuit Court of Appeals (C.A. No. 19718, March 26, 1970), this cause was remanded this Court for an evidentiary hearing, to determine whether or not the defendant Kentucky State Bar Association was motivated by "bad faith" in the institution of disbarment proceedings against the plaintiff, attorney Daniel T. Taylor, III. In the words of the Sixth Circuit:

> If the appellants can bear the "heavy burden" of showing that the Bar Association proceedings were instituted deliberately to suppress First Amendment rights, and if the appellants can overcome the strong presumption that the Bar Association's motive was to enforce its canons of ethics, then the District Court can frame an appropriate remedy against the Bar Association by enjoining further grievance proceedings and preventing the Bar Association from presenting any recommendations to the Court of Appeals of Kentucky. 424 F. 2d 478, 482.

The court reasoned that if such a burden could be met, if bad faith proceedings without hope of ultimate success, calculated only to harass, could be shown, then a federal injunction could issue under 42 U.S.C. §1983 and the doctrine of *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965) in order to prevent a "chilling effect" upon the exercise of First Amendment rights by plaintiff Taylor and other Kentucky lawyers, who, like Taylor, are inclined to represent controversial clients.

Accordingly, plaintiff Taylor was granted a full evidentiary hearing in this court, which lasted from the

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morning of July 6, 1971, until the evening of July 9, 1971. Some fifty (50) or more witnesses testified at said hearing, and extensive exhibits, including in camera transcripts of proceedings in other disciplinary matters, were filed. The Court has duly considered the transcript of that hearing (875 pages) and the briefs submitted by both parties.

A chronology of the K.S.B.A. disbarment proceedings can be stated fairly succinctly. In May of 1967, complaints about attorney Taylor began coming to the attention of the Bar Association Board of Governors. An investigation of said complaints by Mr. Henry Harned (Director of the Kentucky Bar Association) and members of his staff (Mr. Paul Mahoney and Mr. James Higgs) resulted in a nine (9) count charge being preferred against Taylor on July 29, 1968. The charge included neglect and abandonment of a client, assault and battery upon a fellow attorney, intimidation of a witness, the deceitful presentation of persons other than the actual defendant in court, and five more counts involving contempt of court in the Geary murder trial. Two months after the charge was filed, on September 20, 1968, the Board of Governors appointed a Trial Committee of three men (Pat Rankin, John Coleman, and Clyde Williams) to hear the charge in accord with rules of the Kentucky Court of Appeals. The Trial Committee held a three-day hearing at which all parties were represented by counsel and were granted the right to confront and cross-examine witnesses. The Trial Committee found plaintiff Taylor guilty on all nine (9) counts in a report to the Board of Governors and recommended a one-year suspension from practice. The Board of Governors subsequently, upon its con-

sideration of the Trial Committee report, dismissed (2) of the counts,[1] however still found Taylor "guilty" on the remaining (7), and increased the penalty recommended by the Trial Committee from a one to five-year suspension from the practice of law in Kentucky. Said penalty was then recommended by the Board of Governors in an advisory opinion to the Kentucky Court of Appeals,[2] which has not yet been acted upon by the Court.

In passing on the issue of the existence or non-existence of a "bad faith" prosecution, the role of a federal court is limited. Our function is not to weigh the evidence, nor to decide if attorney Taylor is, in fact, guilty of the charges; we rather must determine whether or not the record contains *any credible evidence* to support a finding of guilty. Only if the record is *totally devoid* of any such credible evidence to support a guilty verdict, can bad faith be presumed. *Thompson* v. *City of Louisville*, 362 U.S. 199 (1960-; *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969); *Cameron* v. *Johnson*, 390 U.S. 611 (1968). In Thompson (supra), the now-famous "Shuffling Sam" case, the Supreme Court fixed the boundaries of our inquiry to be:

> The ultimate question presented to us is whether the charges against petitioner were *so totally devoid of evidentiary support* as to render his conviction unconstitutional under the

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[1] Count 4 (accusing Judge Pound of disability from either medicine or alcohol); Count 6 (abandoned client).

[2] The Remand Order of the Sixth Circuit Court of Appeals incorrectly stated that "continuances, postponements and the initiation of this lawsuit have forestalled further action by the Trial Committee." 424 F.2d at p. 479.

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> Due Process Clause of The Fourteenth Amendment. Decision of this question turns not on the sufficiency of the evidence but on whether this conviction rests on *any evidence at all.* 365 U.S. 199. (Emphasis added).

Only the total lack of evidentiary support for the finding of guilt can overcome the "strong presumption" that the sole motive of the defendant Bar Association was simply to enforce its canons of ethics, and thereby replace it with another presumption—that of "bad faith." Indeed, plaintiff Taylor bears a heavy burden of proof.

In an exhaustive sixty-page brief, plaintiff Taylor contends that there is a total lack of evidence to support a finding of guilty on any of the charges; that "bad faith" is also evident at all stages of the proceedings; and that the disciplinary actions were taken solely to harass plaintiff Taylor, i.e., punish him for representing controversial, unpopular clients and causes, and to deter other lawyers in Kentucky from practicing law in Taylor's fashion.

We cannot agree. A review of the record conclusively demonstrates credible evidence of a course and pattern of "unlawyerlike" and unprofessional conduct by attorney Taylor, which fully justifies the strong presumption that the defendant Bar Association was merely enforcing its own canons of ethics by which Taylor had agreed to abide when granted his license to practice law in Kentucky.

The evidence presented by plaintiff Taylor clearly failed to overcome the strong presumption of good faith. Although many witnesses testified that attor-

ney Taylor was an unorthodox, independent lawyer who devoted his practice almost exclusively to the representation of controversial, unpopular clients, *no casual link* between that (undisputed fact, and the disciplinary proceedings was ever shown. We are convinced that the defendant Bar Association disciplined plaintiff Taylor without regard to his clientele, and that like conduct in the defense of more "popular" clients would have resulted in the same disciplinary proceedings. The intent of the Bar Association was obviously to preserve the integrity of the legal profession, not to suppress Taylor's First Amendment freedoms.

Plaintiff's brief asserts that the "bad faith" of the defendant Bar Association becomes patent at four stages of the disciplinary proceedings; (1) Bias and incompetence in the investigation; (2) Denial of procedural due process at the hearing; (3) Bias in the actual voting by the Board of Governors; and (4) Unequal treatment as to the penalty imposed compared to prior cases. Each point must be analyzed separately.

Investigatory Stage

Plaintiff Taylor argues that the investigation prior to the filing of charges was the original and most blatant example of the "bad faith" prosecution, in that it was "grossly biased," "incompetent," and displayed the same "reckless disregard for truth" condemned by the Supreme Court in *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), and *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130 (1967).

In support of these bold allegations, plaintiff submits that counts 6 through 9 were "secretly held in abeyance

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over the plaintiff's head for over a year," and then hurriedly investigated and preferred to supplement counts 1-5 which arose out of Taylor's conduct at the Geary murder trial. Further, it is argued that the facts were not thoroughly checked, and no effort was made to obtain evidence favorable to the plaintiff. Nothing in the record is more pertinent on this score than the direct examination of Mr. Henry Harned, Director of the Kentucky Bar Association, by plaintiff's attorney, William Kunstler. Mr. Harned, who was in charge of the investigation of palintiff Taylor, repeatedly testified that the K.S.B.A. took no action on counts 6, 7, 8, and 9 for about one year, because, as a matter of standard operating procedure, they had been referred to the Louisville Bar Association for investigation:

> "Q: Then, why, Mr. Harned, didn't you present counts 6, 7, 8, and 9, all of which were more than a year old; why didn't you present those if they were so serious to the Board of Governors prior to May 8, 1968, when you asked for permission to investigate them fully?"
>
> "A: I explained that this morning. They were submitted to the Louisville Bar for investigation by their committee and they were under investigation by the Louisville Bar. p. 131.
>
> * * *
>
> "[T]hey do an excellent job investigating cases down here; that it would take us months and months to accomplish and they know the people and they know the events as they occur and they do a fine job of investigating and reporting back to my office and that's been going on for years." p. 132. *Transcript of Proceedings*, Volume IV, pp. 131, 132.

Moreover, the testimony of Mr. Harned reveals a reasonably thorough investigation on the part of the defendant K.S.B.A as well. In regard to the "fake defendant" charge (count No. 9), the following colloquy appears in the transcript:

> "Q: And isn't it a fact, Mr. Harned, that you singled out Mr. Taylor because you weren't concerned with Mr. Tucker; he wasn't the object of what you wanted to get; isn't that correct?"
>
> "A: Oh, I had no choice except to apply the facts to Mr. Taylor."
>
> "Q: But you could have applied them though, to Mr. Tucker, just as well, couldn't you?"
>
> "A: Only from the newspaper account."
>
> "Q: Well, what else did you have about Mr. Taylor other than the newspaper account?"
>
> "A: Uh, the testimony of Judge Colson, and Mr. Riggs and Mr. Brammell, Officer Brammell." *Transcript*, Volume IV, p. 97.

In an effort to find the truth about the events that took place on that day of great confusion in City Police Court, Mr. Harned interviewed the Judge (Colson), the prosecutor (Riggs), and the police witness (Brammell). These men certainly were in a good position to know the events that transpired; they were present.

The "abandoned client" charge (count No. 6) arose out of an affidavit by Mrs. Ruby Orbison, the sister of the client who was allegedly abandoned, followed by a statement obtained from attorney Sidney Baer who replaced Taylor after the order of withdrawal was eventually entered. (See *Transcript*, Volume IV, pp.

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103, 107, 109). Both Mrs. Orbison and Mr. Baer were in a good position to know what transpired, and whether or not the client had been "abandoned"; they were present when the incident occurred.

Likewise, the charge of assault and battery (count No. 7) also arose out of a reasonably thorough investigation. Mr. Harned obtained the affidavit of Mr. John Tim McCall, the attorney who was physically attacked by attorney Taylor, and the statement of another attorney who was present when the incident occurred, Mr. Robert E. Fleming (who considered the conduct of attorney Taylor as "uncalled for and unbecoming a lawyer"), as expressed in Fleming's written communication to the Bar during its investigatory procedures.

Count No. 8, the "intimidation of a witness" (a female reporter), arose out of the same incident as the assault and battery charge, and was supported by the same investigation and evidence, (i.e., statements by attorneys McCall and Fleming).

Finally, counts 1-5 arose out of plaintiff Taylor's conduct at the Geary murder trial (April 29-May 3, 1968). Mr. Harned brought these charges only after an extensive interview with Judge J. Miles Pound (who held plaintiff Taylor in contempt of court), and after reviewing excerpts from the trial transcript, as well as numerous newspaper articles.

We find the nine counts of unethical conduct were brought against plaintiff Taylor only after a reasonably thorough investigation by the Louisville and Kentucky Bar Associations. There is no evidence herein to suggest that the Taylor investigation was any less competent or thorough than investigations of alleged unethical conduct by other attorneys in the past.

Finally, plaintiff contends that the investigatory staff failed to properly "verify"[3] the charges before formally preferring them to the Board of Governors. But such was not the case. The clear evidence in the record shows that each of the nine (9) counts were "verified" by affidavits, letters, or interviews, prior to July 19, 1968, when the Board of Governors authorized the filing of the 9-count charge. Counts 6-9 had been verified between May of 1967 and May 8, 1968. Counts 1-5 were verified (by an interview of Judge Pound) between May 8, 1968 (when the Geary murder trial ended) and July 19, 1968 (when the nine counts were filed). (See *Transcript of Proceedings*, Volume IV, p. 129).

We, therefore, conclude that no bias or incompetence existed in the investigation of plaintiff Taylor by the defendant Bar Association, and that said preliminary proceedings were conducted in good faith in an effort to uphold the canons of ethics.

Alleged Denial of Procedural Due Process at the Hearing

The second stage of the disciplinary proceedings at which plaintiff maintains "bad faith" existed was the "hearing stage." Plaintiff urges on brief that the refusal of the Trial Committee to allow a public hearing, their refusal to be examined as to bias, introduction of "editorialized excerpts" of the Geary trial, and the requirement that a guilty attorney pay all costs of disciplinary proceedings all constitute a denial of proce-

[3]A term required to mean "substantiated" as opposed to "sworn to" as there is no legal requirement of a formal swearing by everyone to everything in an investigatory process.

dural due process and hence "bad faith" on the part of the defendant Bar Association.

Once again, there is no merit to plaintiff's allegations.

The Sixth Amendment of the United States Constitution and the Kentucky Bill of Rights do guarantee the right of a public trial to the accused "in all *criminal prosecutions*". U.S.C.A. Amend. 6 (Emphasis added). Plaintiff Taylor, however, fails to cite any authority whatsoever for the idea that disbarment proceedings are in the nature of a "criminal prosecution." We hold that they are not, and, hence, no right of "public trial" exists under the Sixth Amendment. Disbarment proceedings are, rather, sensitive disciplinary matters, which, as a matter of public policy, should be conducted in private, in order to encourage potential witnesses to come forward as well as to protect the accused attorney from unnecessary publicity resulting from false or unproven assertions. A similar result was reached by a New York Federal Court in 1953, in *American Broadcasting Company* v. *United States*, 110 F. Supp. 374 (1953) in which the Sixth Amendment right to a public trial was held inapplicable to Federal Communications Commission license revocation proceedings. Said the court:

> "A finding by the F.C.C. that its rules had been transgressed would not amount to a conviction for a crime (citing cases) nor would the denial of a license to an applicant be punishment for a crime." 110 F. Supp. 374, 390.

We can detect no difference between the revocation of a license to operate a radio or TV station due to violation of F.C.C. Rules, (as in *A.B.C.*), and the suspen-

sion of a license to practice law due to the violation of the Bar Association canons of ethics (as in the case at bar). Neither proceeding is in the nature of a "criminal prosecution," and thus neither requires a public trial under the Sixth Amendment.

Likewise, disbarment proceedings are not the "criminal trials" covered by the *Sizemore* "conflict of interest" rule. In *Asher* v. *Mills*, 421 S.W.2d 79, the Kentucky Court of Appeals stated that rule quite clearly:

> "This court has long since decided in *Wagers* v. *Sizemore*, 300 S.W. 918, and *Roberts* v. *Noel*, 296 S.W.2d 745, that a decision whereby the decision-maker *in a criminal case* is paid only if the defendant is found guilty violates the Fourteenth Amendment to the United States Constitution." 421 S.W.2d 79, (Emphasis added).

Plaintiff argues that R.C.A. 3.460 is unconstitutional because the Bar Association is only reimbursed for its costs incurred in the disciplinary proceedings if the accused attorney is found guilty and then required to pay the costs incurred; maintaining such a rule allegedly creates a pecuniary conflict of interest. The cases cited by the plaintiff, however, (*Sizemore*, *Asher*, *supra*, and *Roberts* v. *Nell*, 296 S.W.2d 247 (1936)) are all distinguishable, because all involved *criminal trials*, in which either the judge or jury had a direct *personal* financial stake in the outcome of the trial. In the case at bar, we have no "criminal trial," and the triers of fact (K.S.B.A. Trial Committee and Board of Governors) have no direct *personal* financial stake in the outcome. Only the defendant K.S.B.A. itself must incur expenses for which it may be reimbursed (i.e., the K.S.B.A. Treasury); the individual members

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of the Trial Committee and Board of Governors are not required to expend personal funds for which they might hope to be reimbursed. Thus, plaintiff Taylor was not deprived of procedural due process by operation of R.C.A. 3.460.

Neither do we see a denial of due process in the introduction of certain excerpts from the Geary murder trial rather than the entire transcript. Plaintiff cites no case law authority to support said contention, and the rule cited, R.C.A. 3.380, is inapplicable. The *relevant rule*, R.C.A. 3.360, states that

* * *

> "Where, in any proceeding, evidence has been taken under oath, upon due notice to the Respondent, and at the taking of which Respondent has appeared, either in person, or by counsel, or as an attorney for any party, a duly certified transcript *of all, or the essential portions of* such proceedings may be used as evidence in any hearing provided for in R.C.A. 3.200 (Trial Committee Hearing) or in any investigation antecedent to or in connection with any disciplinary case involving the same charge growing out of matters connected therewith and such transcript and records, *or parts thereof* may be made a part of the record on any hearing or investigation." (Emphasis added).

The Rules of the Kentucky Court of Appeals thus clearly allow the introduction of excerpts and portions of transcripts of other proceedings which are relevant to the disbarment proceedings. Plaintiff Taylor fails to cite any authority for the assertion that such a rule is violative of due process of law, and the thought that the excerpts may have been "editorialized" by the court

reporter is mere conjecture and wholly without evidentiary support.

Finally, no denial of due process is seen in the refusal of the defendant Trial Committee to allow themselves to be examined as to possible bias on their part.

Plaintiff argues that under the rule of *Osborne* v. *Bullitt County Board of Education*, 415 S.W.2d 607, (1967), the dual role of the defendant K.S.B.A. required such an examination. But *Osborne* does not apply. There, the School Board constituted the last step in the administrative process; herein, the Kentucky Court of Appeals is the final judge of the fairness of the disbarment proceedings by the Trial Committee and Board of Governors. As the last rung in the administrative ladder, the Court of Appeals is charged with the discovery of any possible bias, or caprice along the line. Moreover, the Rules of the Court of Appeals make no provision for the examination of Trial Committee members for possible bias.

The hearing stage is also attacked by plaintiff Taylor in the allegation that the Trial Committee Report contains no credible evidence to support any of the nine counts of unethical conduct lodged against him.

Counts 1-5 (contempt of court in the Geary murder trial) should all be totally excused, it is submitted, because the judge involved was under the influence of alcohol during the trial.[4]

No one can read the Geary trial excerpts without rejecting such an argument. Attorney Taylor did not

[4]A charge never proven conclusively.

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even put the matter of Judge Pounds' physical condition into issue until the afternoon of May 3, 1968, the last full day of testimony. All of the other contempt incidents occurred prior in time to the allegation that Judge Pound was under some physical disability and were wholly unrelated to said alleged condition.

Even the most cursory reading of the Geary trial proceedings reveals a pattern of conduct by attorney Taylor that can only be characterized as contemptuous and reprehensible. We could easily cite numerous portions of the Geary transcript to prove our point, but we decline to do so. Our function here is not to try the merits of this case, or to determine the guilt or innocence of attorney Taylor; our function is to simply determine if credible evidence exists in the record to support a finding of guilt. Suffice it to say we find credible evidence in the Geary transcript *more than sufficient* to justify a guilty verdict on counts 1, 2, 3, and 5 of the Taylor charge.

Likewise, a guilty verdict on counts 7, 8, and 9 are also supported by substantial credible evidence. (See *Transcript of Proceedings*, Volume II, pp. 61-73, Volume IV, pp. 79, 80, 95).

In reference to the "fake defendant charge" (count 9), although Police Judge Colson saw no fraud *at the time* (*Transcript of Proceedings*, Volume I, p. 68) in that he was aware of no legal rule against testing the identification of defendant by police, such a practice constitutes the perpetuation of a fraud upon a court in violation of canon seven of the Canons of Ethics of the American Bar Association.

Reiterating that we leave the merits of this case to the Kentucky Court of Appeals, we conclude that, as

a matter of law, substantial credible evidence exists in the record to support a finding of guilty by the defendant K.S.B.A. Board of Governors on counts 1, 2, 3, 5, 7, 8, and 9 of the 9-count charge.

Consequently, we find no denial of due process, bias or bad faith in the hearing stage of the Taylor proceedings.

Alleged Bias in the Voting by Board of Governors

The substance of this point is that four (4) members of the Board of Governors who *did not vote* on plaintiff Taylor's guilt or innocence on March 20, 1970, *did vote* on punishment the next day, March 21, 1970.

Although such a procedure may be somewhat unusual, legitimate reasons explain the occurrence. According to the record, two of the men involved, Mr. Allen Schmitt and Mr. E. Gaines Davis, were members of the Kentucky General Assembly at the time and were appearing that afternoon before some legislative committee (the day of the vote on guilt or innocence). Two others, Anthony Hellmann and Lloyd Cardwell, abstained from voting on guilt or innocence because they were members of the Louisville Bar Association, and were so "close" to the case. (See *Transcript of Proceedings*, Volume IV, pp. 146, 147).

Thus, each of the four men involved had a legitimate reason for not voting on plaintiff Taylor's guilt or innocence and then voting on the punishment the next day. Certainly, the failure to vote on guilt or innocence was no waiver of the right to vote on penalty.

Moreover, the votes of the four Board members involved had no effect on either the find of guilt or the

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penalty recommended. The findings of guilt were by clear majorities on seven counts of the 9-count charge. The penalty vote resulted in eleven (11) votes for a 5-year suspension, two (2) votes for total disbarment, and one (1) vote for a 2-year suspension. Even if the four Board members referred to *did not vote at all*, nine (9) votes for *at least a five-year suspension* would remain, constituting a majority of the seventeen (17) Board members eligible to vote.[5]

Indeed, every member of the Board of Governors, save one, voted for *at least* a five-year suspension. (See *Tally Sheet*, plaintiff's Exhibit 9).

Contrary to showing bias, the voting of the Board of Governors reveals careful thought and independent judgment. Although the Trial Committee found plaintiff Taylor guilty on all nine(9) counts of the charge, the Board of Governors found plaintiff "not guilty" on count No. 4 (accusing Judge Pound of drunkenness in court) and count No. 6 (the abandonment of a client).

Credible evidence is thus evident in the record to support that the voting of the Board of Governors was conducted in good faith, and no evidence of the plaintiff rebuts this presumption of regularity.

Penalty Stage

Plaintiff's final argument is that the 5-year suspension recommended by the defendant K.S.B.A. is an

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[5]"R.C.A. 3.390: * * * Both the finding of guilt and the disciplinary action to be recommended must be agreed upon by a majority of the members of the Board entitled to vote in disciplinary proceedings."

unduly harsh penalty which denies him equal protection and again shows bias and bad faith.

Again, we cannot agree. The submitted *in camera* case[6] is not analogous to the case at bar in any sense of the word. There, an attorney was investigated on a single charge (i.e., destruction of evidence) growing out of a single event; whereas, nine (9) charges were lodged against attorney Taylor, growing out of numerous incidents over a period of time.

Plaintiff also cites numerous Kentucky cases which allegedly resulted in more lenient penalties for an equal quantum of guilt.

The Court has read and analyzed all of the cited cases,[7] and we find none of them in point. While we do not feel compelled to distinguish each of the cases and all of their factual nuances, we conclude generally that none of the cited cases involved the pattern of conduct over a period of time resulting in nine charges. Rather, the cited cases dealt with fewer, usually less serious charges flowing from a single incident.

Again we hasten to add that the Kentucky Court of Appeals is the final arbiter in these disciplinary proceedings; they will make the final decision on the fairness of the recommended 5-year suspension. We can detect no unequal treatment, bias or bad faith in that recommendation.

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[6]By order of this Court, identification of the in camera case, or its parties, is prohibited.

[7]*In Re Lewis*, 282 S.W.2d 321; *In Re Gordon*, 402 S.W.2d 854; *In Re Allen*, 212 S.W.2d 328; *In Re Vaughn*, 369 S.W.2d 14; *In Re Bentley*, 201 S.W.2d 712; *In Re Cohen*, 187 S.W.2d 833; *In Re Carroll*, 406 S.W.2d 845.

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Conclusion

Plaintiff urges that we look to the "totality of circumstances"[8] to determine whether or not the defendant K.S.B.A. conducted "bad faith" disbarment proceedings, designed deliberately and solely to suppress his First Amendment rights. This, we certainly have done. And, a careful analysis of the record (1,000 pages of Trial Committee Proceedings, 800 pages of Proceedings of the Evidentiary Hearing before this Court, Briefs and Exhibits) leads us to the inescapable conclusion that there is substantial credible evidence to support the finding of guilty by the defendant K.S.B.A., and that the sole motive of the defendant was to enforce its own canons of ethics, so vital to the integrity of the legal profession. Plaintiff Taylor's allegations of bias and bad faith at the investigation, hearing, voting and penalty stages of the proceedings are unfounded and unsupported by the evidence and fail to overcome the strong presumption of regularity and good faith on the part of the defendant Kentucky State Bar Association.

After pretrial, trial, briefing, and submission of this action following its remand to us by the Sixth Circuit; in fact, as late as January 2, 1972, when we were actually engaged in preparing this Finding, the plaintiff Taylor tendered to us a supplemental complaint, seeking thereby to add a new plaintiff (one Tinsley) and a new defendant in the person of Judge John P. Hayes of the Jefferson Circuit Court. The allegations of the tendered document have nothing whatsoever to do with the controversy here tried, briefed, and sub-

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[8] *Sobel* v. *Perez*, 289 F.Supp. 392 (E.D. La. 1968).

mitted; stemming rather from a performance by the plaintiff Taylor and the punishment he received therefor following a criminal proceeding in the Jefferson Circuit Court, arising long after our trial of the instant action. Those allegations are in and of themselves, if they be anything, a separate and distinct matter, not related in time, substance, or identity to the issues now before us. The motion to file such supplemental complaint is OVERRULED. *U. S.* v. *South Pacific Co.*, 75 Fed. Supp. 336.

WHEREFORE, the plaintiff's action is dismissed at plaintiff's costs, and the Kentucky State Bar Association is accordingly hereby relieved of its self-imposed inhibitions against further proceedings to discipline Daniel T. Taylor, III.

January 14, 1972

JAMES F. GORDON
United States District Judge

Copies to:
Counsel of record

Entered
Jan. 14, 1972

BARBARA D. SPAIN
Deputy Clerk
August....., Clerk